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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LEE OLIVER COLLINS,

Defendant and Appellant.

F076455

(Super. Ct. No. BF141639A)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Kern County. Michael G. Bush, Judge.

Allan E. Junker, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez and Cavan M. Cox II, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Levy, Acting P.J., Detjen, J. and Snauffer, J.

After a contested hearing, the court found appellant Lee Oliver Collins violated his felony probation (Pen. Code, § 1203)<sup>1</sup> and sentenced him to prison.

On appeal, appellant contends the evidence was insufficient to support the court's finding that he violated his probation. We affirm.

### **FACTS**

On April 22, 2009, Collins approached a woman outside her residence and convinced her to give him some water. He then followed the woman, without her permission, inside her house. When the woman turned away from him to wash a cup, Collins placed his hands around her waist and slid them under her shorts. Collins left per the victim's request but was arrested a short time later.

On May 15, 2014, Collins pled no contest to sexual battery (§ 243.4, subd. (a)) in exchange for an initial grant of probation and a suspended four-year prison term.

On June 13, 2014, in accord with his negotiated plea, the court sentenced Collins to a four-year prison term, suspended execution of his sentence, and placed him on probation for three years on several terms and conditions.

On May 15, 2017, Collins was arraigned on allegations that he violated his probation by committing new law violations and failing to report that he had been arrested.

On September 28, 2017, the court held a hearing on the alleged probation violations. At the beginning of the hearing, the prosecutor stated that they were basing the violation of probation on Collins's failure to report an arrest. Supervising Probation Officer Matt Gomez then testified that although Collins was not on his caseload, he became aware through booking information that Collins was arrested on misdemeanor charges on Friday, April 28, 2017. After Gomez testified that the arrest resulted in

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<sup>1</sup> All statutory references are to the Penal Code.

charges being filed against Collins in case No. BM90438A, the court granted the prosecutor's motion to take judicial notice of that case.

Gomez further testified that the time frame for reporting an arrest is immediately, as soon as the probationer has access to a telephone or can contact his or her probation officer in person. Although the probation office is only open on weekdays from 8:00 a.m. to 5:00 p.m., a probationer can leave voice mail messages on a probation officer's telephone 24 hours, every day. If a probationer reports an arrest by telephone, the information is entered into an internal database system and a printed form is placed in the probationer's case file. If he reports in person, the information is entered into the database and the probationer fills out a monthly reporting form where he is required to indicate if he had any law enforcement contact and/or was arrested. This form is also placed in the probationer's case file.

Gomez determined through Collins's case file that after his release from custody on April 29, 2017, Collins had not contacted his probation officer or the office to report his arrest, as he was required to do by the conditions of probation that were imposed on him prior to August 28, 2017.<sup>2</sup> Before searching for Collins, Gomez asked his probation officer if he had received any messages from Collins reporting his arrest and the officer said he had not.

On May 2, 2017, Gomez located Collins at a residence. Gomez spoke to Collins. Collins acknowledged having been arrested for violating section 647, subdivision (f) and section 148, subdivision (a)(1) and admitted that he did not report the arrest to the probation department.

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<sup>2</sup> This was Collins's third violation of probation. His original conditions of probation did not include one requiring him to report any arrests and the record does not include any documentary evidence that shows his probation was subsequently modified to include such a condition. However, in the trial court Collins did not dispute Gomez's testimony that as a condition of probation he was required to report any arrests, nor does he dispute on appeal that he was subject to this condition.

Collins testified that he was arrested on April 28, 2017, at around 5:40 p.m. Afterwards, when he was taken to Kern County Medical Center (KCMC) he was in poor physical condition, suffering from heatstroke and dehydration, and he was sore from having been tasered three times and falling off a gurney. He was released the following morning at 4:00 a.m., went to a friend's house, and slept in the garage. When he awoke, he called his probation officer, but was told that his officer was gone and unavailable. Collins then went to KCMC to get documentation that he had been there the day before. However, he was informed there was no documentation because, even though he was taken there by police officers, he was not treated.<sup>3</sup>

Collins also tried to contact his probation officer early Saturday and again after he left the hospital and he left a voice mail message during one call. On Monday he called again and received a recorded message. Collins left a voice mail message only once because he did not think it was necessary to keep leaving messages.

In finding that Collins violated his probation, the court stated it believed Gomez's testimony that the internal database system would have shown Collins called and left a voice mail message, if that had occurred. The court then imposed the four-year prison term it had previously suspended.

### **DISCUSSION**

Collins contends the evidence is insufficient to support the court's finding that he violated his probation because it failed to show that his violation was willful. There is no merit to this contention.

Section 1203.2, subdivision (a), authorizes the trial court to revoke probation if it has reason to believe that a defendant has violated any of his probation conditions. The facts supporting revocation need only be proven by a preponderance of the evidence,

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<sup>3</sup> On Monday, April 30, 2017, Collins returned to KCMC to try to get documentation proving he had been there the previous Friday.

(*People v. Rodriguez* (1990) 51 Cal.3d 437, 441) and the evidence must only show the violation was willful. (*People v. Galvan* (2007) 155 Cal.App.4th 978, 981–982.)

“ ‘In reviewing a challenge to the sufficiency of the evidence [to support a finding that a defendant violated his probation], we do not determine the facts ourselves. Rather, we “examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value—such that a reasonable trier of fact could find [by a preponderance of the evidence that] the defendant [violated probation.]” [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] ... We do not reweigh evidence or reevaluate a witness’s credibility.’ [Citations.] ‘Resolution of conflicts and inconsistencies in the testimony is the exclusive province of the trier of fact. [Citation.] Moreover, unless the testimony is physically impossible or inherently improbable, testimony of a single witness is sufficient to support a [finding that the defendant violated probation].’ ” (*People v. Brown* (2014) 59 Cal.4th 86, 105–106.)

Collins testified that he called his probation officer three times to report he had been arrested and that he left a voice mail message one time. However, the court explicitly stated it believed Gomez’s testimony that a call to the probation department would have been logged into their internal database system and that no such call was logged. Since Gomez’s testimony was neither physically impossible or patently false, the evidence supports the court’s implicit finding that Collins did not attempt to contact his probation officer.

Willful means “simply a purpose or willingness to commit the act, or make the omission referred to.” (§ 7, subd. (1).) Gomez testified that a probationer could call the office any day, 24 hours a day and leave a message. Further, Collins implicitly conceded through his testimony that he had a phone available to him and the court implicitly found he was untruthful when he testified that he called the probation office. The court could

reasonably conclude from these circumstances that his failure to report his arrest was willful. (CALCRIM No. 362 [false statements may show consciousness of guilt].)

Collins cites information in the police report for his arrest on August 28, 2017, to contend that it corroborates his testimony that he was tasered three times, fell off a gurney, and was taken to KCMC. He further contends that the court's incredulity of these circumstances colored its opinion of his testimony, including his testimony that he attempted to call his probation officer. Collins further posits that these "verifiable facts" elicited from him "establish that his inability to contact the probation officer was not a willful violation of probation." Thus, according to Collins, because the trial court's "inferences about [Collins's] rendition of facts and [his] credibility were wrong[.]" there is no substantial evidence of solid value that supports the court's finding that he violated his probation. We disagree.

Since the credibility of witnesses is a matter that is in the exclusive province of the trier of fact, (*People v. Brown, supra*, 59 Cal.4th at p. 106) any arguments regarding credibility should have been made in the trial court. Nevertheless, we note that even if the court had considered the police report, it would not have bolstered Collins's credibility as he contends. In finding a probation violation the court stated:

"I believe Mr. Gomez—I believe the system would have shown that the defendant called and left a message. When I weigh that, ... against this incredible story the defendant told. I simply don't believe that he went to [KCMC] with three Tasers in him, fell off a gurney, in front of God knows who—apparently everybody, ... —and *nobody wrote it up. That does not happen in our society. That would be malpractice. That's part of the story. He said that's what happened. There is no way in the world that happened.*" (Italics added.)

These comments do not indicate that the court disbelieved Collins's specific testimony that he was tasered multiple times, that he fell off a gurney, or that he was taken to a hospital. Instead, they reflect the court's disbelief of Collins's testimony in general because it found inherently improbable Collins's testimony that he went to

KCMC seeking documentation of his visit and treatment there and was told there was none. Further, the court's rejection of his testimony was reasonable because common sense tells us that if a person with injuries is taken by the police to a hospital, the person would be treated, and there would exist a record of the visit and the treatment. Thus, we conclude that the evidence is sufficient to sustain the court's finding that Collins violated his probation.

#### **DISPOSITION**

The judgment is affirmed.